



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 11, 1998

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-1198

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115403.

The Texas Department of Public Safety (the "department") received an open records request for information reflecting the county of conviction on a particular criminal history previously provided to the requestor pursuant to section 411.135 of the Government Code. Section 411.135 provides in pertinent part:

(a) Any person is entitled to obtain from the department:

....

(2) criminal history record information maintained by the department that is a court record of a public judicial proceeding and that relates to:

(A) the conviction of a person for any criminal offense; or

(B) a grant of deferred adjudication to a person charged with a felony offense.

See Acts 1997, 75th Leg., ch. 747, § 2, eff. Sept. 1, 1997.

You explain that in this instance the department does not possess the requested information:

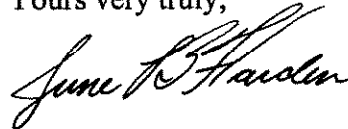
Usually, when the courts are reporting conviction and deferred adjudication information to the Department for inclusion in the Criminal History Record System, the reports include the county of conviction. Sometimes, however, the report does not [include the county of conviction] and the only indication of where the conviction occurred is inferred from the county of arrest information that had previously been reported by the arresting agency. This is the situation with [the information at issue].

You express concern that releasing the county of arrest in response to the request would exceed the department's authority under section 411.135 and therefore violate other provisions of law prohibiting the release of criminal history record information ("CHRI"). See Gov't Code § 411.083; Code Crim. Proc. art. 60.06 (b) (CHRI compiled by department or Texas Department of Criminal Justice may be disclosed only as authorized by federal or state law). You therefore contend that the department must withhold the county of arrest pursuant to section 552.101 of the Government Code.¹

Because the department does not possess the requested information, it need not comply with the request. The Open Records Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. Open Records Decision No. 445 (1986). Furthermore, we agree that in this instance the department may not release any CHRI information, including the county of arrest, that the department received only as a result of the criminal defendant's arrest.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/glg

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Ref: ID# 115403

Enclosures: Submitted documents

cc: Mr. Carl M. Weeks
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(w/o enclosures)